

State administrative and contractual character of labor law relations of civil servants

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Abstract

The place of labor law relations of civil servants in the system of relations between state administration and labor contract, its theoretical-conceptual and legal basis were analyzed in the article. There were touched upon the elements which combine labor of civil servants in the system of relations of state administration and labor contract character. Labor relations of civil servants have complex composition elements. Implementation of these relations in state bodies is one of the main factors which stipulates the complexity of its composition. Another factor includes the possibility of implementation of mainly two constitutional rights of the citizens of the Republic of Azerbaijan – right to work and right to take part in governing the state. Along with the organization and activity of state power and state administrative bodies in accordance with the legislation, state administrative relations, in accordance with their status and competence, arises in connection with the implementation of the objectives and functions of the state. Public relations forming the subject of legal regulation of civil service relations are the legal model of public relations fixed in the legislation on civil service. Labor relations of civil servants act as the part of system of civil service legal relations. Here mainly, legal relations on two aspects attract more attention. One of these relations is the legal relations arising on state administration based on the principle of power-subordination. And the other are the legal relations arising on the implementation of the constitutional right to work in state bodies based on the principle of freedom of labor and on the labor contract. The main subject of the both legal relations is civil servants. This aspect combines labor law relations of civil servants in the system of relations of state administration and labor contract character.

Keywords: civil service, civil servants, state administrative relations, labor and law relations, labor contract

Introduction

The process of state-building in the Republic of Azerbaijan is conditioned with complex reforms and durable nature. The efficient and purposeful reforms founded by the national leader HeydarAliyev being regularly continued and developed are successfully implemented by the President of Azerbaijan Republic IlhamAliyev. One of the missions these reforms put forward is provision of an expediency and efficiency in state administration. Professional civil service activity holds a great place among the factors conditioning expediency and efficiency in state administration. The civil service is one of the main provision means of implementation of state government and state administration.

Highly evaluating significance of the civil service the President of Azerbaijan Republic IlhamAliyev noted that "To work in a civil service of the independent Azerbaijan Republic is very honorable for any person. It means that this citizen is trusted to be in the first rows of building of an independent and democratic state and civil society. Every person should know that to be in a civil service is not a privilege, it is a responsibility. It is an opportunity to serve to the people. Not depending on the level and significance of the held position, the civil servant should remember that he is the servant of the nation and his main duty is to serve to the people and to take care of them. (8.p.77-78).

These ideas put forward by the president of Azerbaijan Republic IlhamAliyev bear a great significance from scientific and theoretical, as well from practical point of view, they combine in themselves social,

political, legal, moral, ethical, psychological and other important peculiarities and impose a number of duties before Azerbaijan science, including law.

The norms regulating legal relations of the civil service and defining the status of the civil servants make the main part of different legal areas, mainly Constitution, administrative, labor and social provision legislature systems. Besides it, uniting these norms lay ground for establishment of independent legal area- the state civil service law, systematization of legislation on civil service, consolidation of it in a single legislative act, consolidation of it in a codex, i.e. acceptance of the civil Service Codex of Azerbaijan Republic.

From this point of view it can be said that at present time the state civil service legislation is in the final stage of formation as an independent law area. Analysis of each worker category with different status separately, as well as legal regulation of labor relations of civil servants from scientific point of view is one of the important missions in the modern constitution and labor law sciences. The civil servants get a special worker status by implementing constitutional labor law in the state organs. They enter to the row of subjects of labor law as the worker category with a special status. Determination of the position of labor legal relations of civil servers in the system of state administration and labor contract relations, analysis of its theoretical, conceptual and legal bases, defining the solution ways of practical problems are of great importance. According to the above mentioned, it can be said that the issue about uniting the labor relations of the civil

servants in state administration and labor contract relations system is characterized by urgency both from scientific and theoretical and practical aspect.

Explanation of the keymaterial. Evaluating activity of the civil servants the President of Azerbaijan Republic IlhamAliyev noted that at the modern time when dynamic development processes are taking place in all spheres of our country and when perspective social and economic development programs are being implemented the civil servants have new and modern requirements before them. Being a sample of high professionalism, competence, morality and spirituality, they should gain respect for the official organs by their activity, behavior, decisions and actions they perform and should inspire the citizens for purposes and missions of the state policy. The civil servants should be guided by law supremacy, loyalty to their positional obligations, humanism, social justice principles, and coordinate the interests of the citizen with the interest of the state [8, p.77].

According to Academician R.A. Mehdiyev, in a modern time efficient state administration is built on the unity of legal, political and so-called "state management" principles and activity of the civil servants is evaluated according to the main criteria of the management [12, p.8]. According to Prof. A.Z. Abdullayev, there are different approaches in the social science to the "civil service" concept. The following two approaches are more preferable: - as a particular type of labor activity; as a legal institution of the state [7, p.259]. As one of the results of the extensive scientific analyzes, Prof. A.H. Rzayev states that a high-level civil service plays an important

role in an efficient activity of a civil and democratic state, in one of the important institutions of state administration apparatus – in the activity of the state apparatus and gives a dynamics to them [13, p.20]. G.V. Atamanchuk considers that the civil service is a practical and professional activity of the citizens for implementation of missions and functions of the state via performance of the state positions founded in the state organs [14, p.137]. According to D.N. Bakhrakh, the civil service is first of all a state service, i.e. is a certain activity for implementation of functions and missions in the state organizations upon the state's tasks and for a salary [15, p.5].

We think that one of the main priority directions of the modern state administration consists of improvement of the existing legal bases, creation of new administrative mechanisms, systematization of the state government and state administrative bodies, formation of a corps of professional civil servants, efficient usage of the potential of the civil servants, increasing the level of service and professionalism, and provision of efficient usage of management practice and labor.

Social relations emerging in the sphere of state administration are regulated by the legal acts adopted by the state government and state administration. The state administrative relations can be expressed in narrow and wide meanings as follows.

In a narrow meaning the state administrative relations can be explained as a complex of social relations in which the interests of the state are expressed. In a wide meaning, they can be explained as a complex of social relations emerging in the sphere of implementation of missions and

functions of the state in accordance with the Constitution of Azerbaijan Republic and other legislative acts.

Organization and activity of state administrative relations are implemented in accordance with the existing legislation of the state government and state administrative bodies and they are changed or terminated in accordance with the missions and functions of the state.

According to the above-mentioned, it can be said that labor relations of the civil servants contain complex integral parts. Implementation of these relations in state government and state administrative bodies is one of the main factors conditioning its complex character.

Another factor is that it contains mainly two constitutional rights of the citizens of Azerbaijan Republic- labor right and the right of participation in the state administration. So, in the 35th article of the Constitution of Azerbaijan Republic the "Labor right" and in the 55th article "The right of participation in the state administration" confirms the above-mentioned. Constitutional norms combine labor relations of civil servants with the state administrative and labor contractual relations.

According to R.A.Mehdiyev, the civil service is a field of activity having a great significance in consolidation of state-building of independent Azerbaijan Republic, in implementation of social and economic programs, in cultural development and generally, in regulation of different spheres of the society.

The main missions of civil service include provision of rights and freedoms of the citizens given to them in accordance with the Constitution and other legislative

acts, preparation of decisions within framework of authority of the state organs, their adoption, execution and supervision on its execution, as well as provision of implementation of efficient activity of state organs and positional duties by the civil servants [11, p.575]. The authors of the state and law theories rightly note that "classification of legal relations is carried out by legal regulation methods- administrative relations based on mutual governmental relations of subjects and contractual relations inherent to equality of the parties" [17, p.541]. To my opinion, alongside the other spheres, this classification directly includes in itself characteristics of labor legal relations of civil servants. Both of the above-mentioned peculiarities attract attention while implementation of legal relations of civil service. According to the theoretical provisions and legislation on civil service, it can be said that the legal relations emerging upon activity of the civil servants contain both administrative relations based on mutual governmental relations, and the relations arising from labor contract including in it legal equality of the parties.

Complexity of the legal relations emerging upon the activity of the civil servants is the indicator of their state-legal status. The bases of this activity is the constitutional labor right. The complex of norms regulating social relations included to the subject of the labor right contains specific provisions in it. According to Prof. A.M.Gasimov, social relations assume a form of legal relations if there are two conditions. Firstly, these social relations are needed to be reflected in people's willful behavior acts. Secondly, it should neces-

sarily be regulated by appropriate legal norms [9, 107]. Based on the contract between the parties with equal rights, and unlike the individual right protecting individual interest of an individual or a collective subject,

“Social legal norms are directed to general welfare and protection of state interests and are a part of a valid legal system related with the authorities of the state and organizational – governing activity and implementation of social mission and duties”

[23, p.5]. As one of the characteristics typical for the social right it can be noted that one of the participants of the social legal relations have authorities in relation with the others. No common idea has been formed about the issue about the social and individual and legal character of the legal relations of the civil servants. The essence of the assumptions put forward by the specialists on labor right is that the relations about enrollment of the civil servants to the state civil service, their activity there and termination of their activity are labor legal relations [20, p.10]. Supporting these ideas, it should be noted that this approach has been confirmed in Labor Codex of Azerbaijan Republic (hereafter, LC AR) (2), in the Law of Azerbaijan Republic on Civil Service (5) taking into consideration different categories of the workers, as well as the peculiarities of the legal regulation of the labor of civil servants and in other appropriate normative legal acts regulating civil service relations, also in the Convention №151 dated on June, 27, 1978 of International Labor Organization on “Protection of organizational right of employment in civil service and the method of determination of

employment conditions” ratified by Azerbaijan Republic, as well as

in the Constitution of Azerbaijan Republic (1) regulating labor rights of everyone. Specific peculiarities of legal regulation of labor relations of civil servants do not change the nature of these relations, only includes in it different approach to the subject of salary of civil servants. Some representatives of labor right agree that the service in military forces, in the organs of internal affairs, in frontier troops, in intelligence and counter-intelligence agencies do not refer to the subject of the labor right and that they make the subject of administrative right [24, p.9]. In this case we mean only law and enforcement and military service. But in some cases, changes are applied paying attention to the tendency of combination of appropriate relations emerging upon labor – (e.g. military service referring to labor right field, and it, in its turn, will have a new direction) [18, p.29].

To our opinion, the bases of the activity of this category of people are implementation of a constitutional labor right. We think that one of the main elements characterizing social and legal aspects of social relations regulating civil service is a legal model of social relations determined in the legislation about civil service. Besides the legal model of the legal relations of the civil service, theoretical analyzes also is of great importance. One of the main characteristic aspects of the social and individual nature of legal relations of the civil service is coincidence of the elements referring to the structure of it with the labor legal relations. The elements referring to the structure of the legal relations of labor and civil service, naturally, do not coincide

completely. This characteristic arises from social – legal nature of the legal relations of civil service.

The representatives of labor legal theory paid a special attention to the labor legal relations in their works and presented them in an extensive way. Referring to the hired nature of the civil service, the representatives of labor legal science claim that labor relations of the civil servants can be referred to the subject of labor law [24, s.9]. Prof. A.M.Gasimov (and others) considers that nature of the labor relations of civil servants characterize these relations as service relations (serving) [10, p.137]. According to the authors, “unity of labor law is proved by the collection of indestructible internal relations of norms regulating social relations in labor law field. Unity is characterized with determination of general aim and duties of legal regulation, specificity of the mutual legal impact to the social relations containing the subject of the regulation, equality of the main labor rights and duties, commonness of their realization. Specificity of legal impact means to the social relations making the subject of the legal regulation shows itself in coordination of centralized and local, contractual and governmental regulation, as well as participation of the employees in determination of labor legal norms” [10, s.12]. Y.B.Khokhlov notes that “the mechanism of legal regulation of the social labor being almost formed from the legal aspect in the statics appears as a certain system of legal norms and legal institutions and in the dynamics as the set of legal relations. Therefore, it can be determined as the mechanism of legal regulation of labor relations and from one hand, as an economic

mechanism this concept covers both categories (objective and subjective categories) of the law, and on another hand its implementation [21, s.141]. Agreeing with this assumption put forward by Y.B.Khokhlov it can be concluded that the mechanism of legal regulation of labor relations appears as a set of legal relations in its dynamics.

Taking into consideration of specific characteristics of legal regulation of the labor of civil servants N.G.Alexandrov considers that “the relations related with civil service of judges or the officials with authorities are regulated by the social law” [22, s.30]. According to E.N.Banderenko, “it should not be forgotten that in fact regulation of service relations via individual and collective contract is excluded, and this case leads to emergence of serious differences in legal situation of subjects traditional for labor law. Besides it, majority of conditions of labor contract with a civil servant even the party of the labor contract is determined not with a public administrative body, but directly with the state” [16, s.61]. E.B.Khokhlov holding a right position states that “the role of the labor contract on the basis of labor (service) relations is only legal factor. It is an agreement about entering to the civil service with the conditions not pre-determined in the contract [25, s.279]. The civil servant is not only a hired employee, he is also a person speaking on behalf of the state, protecting the interests of the state, and society (26. p.79)

In the administrative law theory civil service relations are mainly divided into two groups: the relations emerging in the process of organization of the civil service and the relations emerging during carrying out the civil service in practice. The

relations referring to the first group and entering to the system of out-of-apparatus legal relations condition the legal relations of the civil service and bears administrative and legal nature. According to A.M.Abdullayev and F.T.Naghiyev, administrative legal norms regulating state building issues makes an independent institution of administrative law [3, s.69]. V.A.Yusupov considers that the legal institutions providing and detecting principles of the civil service, its implementation rules, positional authorities and obligations of civil servants, attestation of employees are characterized with two peculiarities: similarity and homogeneity of administrative relations regulated by them and specific manifestation of administrative and legal method of influence of social relations to this group [28, p.44]. The second-group relations act as an integral part of in-apparatus legal relations and as a rule, are included to the field of labor legal relations. L.I.Chikanova rightly considers that service and labor legal relations are within the state-service (administrative- legal) relations and they are included to the content of the latter [27, p.17]. To our opinion, development of the legislation about the civil service as a result led to emergence of specialization in the field of regulation of in-apparatus relations regulated by the labor legal norms. However, although the civil service according to its formal content identifies in itself analogical legal norms, it is not possible completely to release the civil service legal institution from the influence of legal norms. According to the above-mentioned, it can be said that individual legal methods are used during regulation of legal relations within framework

of in-apparatus relations. According to the legal nature of civil service legal relations are administrative-legal relations. Besides it, scientific-theoretical and normative provisions show that separate methods containing individual –legal regulation method are used. At the same time, it should be taken into consideration that civil servants during implementation of civil service do not have the legal status equal to the heads of the state administrative bodies that have employed them. The civil service legal relations emerging in the process of organization of the civil service have administrative-legal, in other words, social –legal nature, however in-apparatus civil service legal relations have individual –legal nature. Civil service legal relations are characterized as the set of administrative legal relations containing in it complex internal components.

The main part of the normative provisions of the Law of Azerbaijan Republic about Civil Service regulates legal status of civil servants, as well as their labor legal relations. In the 34th article of the Law of Azerbaijan Republic on Civil Service it is said that “ The other issues related with the enrollment to the civil service not regulated in this Law and in other related legislative acts are regulated with labor legislation of Azerbaijan Republic (5). In the 34th article of the Law a norm is given for subsidiary legal regulation of labor right norms of civil service legal relations.

In the second part of the 5th article of LC AR called “Other work places and employees to which this Codex is applied” it is stated that “This Codex refers to civil servants, as well as employees of prosecution, police and other law enforcement bodies

taking into consideration peculiarities determined with normative legal acts regulating their legal status. If labor, social and economic rights of these servants have not been covered in these normative legal acts, then the appropriate norms given in this Codex are applied to them”(2).

According to the 35th article of the Constitution of Azerbaijan Republic called “Labor Right” it is stated that “Labor is the bases of individual and social welfare. Everyone has a right to choose an activity field, profession, specialization and work place in accordance with his labor abilities. No one can be made work against his will. Labor contracts are freely concluded. No one can be made to conclude a labor contract against his will.” [1].

According to Prof.A.M.Gasimov, citizens in the labor market implement the labor right mainly in the following ways: conclusion of a labor contract; becoming a member of a joint stock company; to enter the civil service; private entrepreneurship. Implementation of the labor right is conditioned in the first case with the citizen, in the second case with the assumption of the employer, in the third case with additional legal facts as appointment or election to a position [9, p.221].

In the first part of the 42nd article of the Labor Codex of Azerbaijan Republic called “Parties of a Labor Contract” it is stated that “Labor contracts are concluded freely.If a man does not make or does not want to make labor relations, he cannot be made to conclude a labor contract” (2). According to the 28.6 article of the Law of Azerbaijan Republic on Civil Service, if no other rule is designed in the legislation, and if the recommendation is positive, the pro-

bationer is accepted to the civil service by concluding a contract for six months test period. ... If the labor contract is not terminated during the test period, then once that time is over, in accordance with the conditions of the contract, the head of the state organ gives an order about accepting that person to the civil service and concludes an appropriate labor contract with him (5).

In labor law science simple and complex bases of establishment of labor legal relations are distinguished. Prof. A.M.Gasimov’s assumptions related with this issue are of great importance. According to the author, “as a rule, labor contract acts as the bases in establishment of labor legal rights. There is a direct instruction about it in the 7th article of LC AR. But in some cases, only labor contract is not enough for establishment of labor legal relations, i.e. labor legislation concludes it with several legal acts. As the set, these legal acts acting as the bases of the labor legal relations own a complex legal content. Existence of these complex contents, first of all, is distinguished with specificity of labor of separate categories of workers, and complexity and responsibility of the work they carry out” [9, p.121]. One of this type of such categories of workers is civil servants. The civil servants in their turn have internal classification.

In the 7th article (“Regulation of labor relations with legislation and contract”) of the LC AR it is stated that “Excepting 2-1 part of the 7th article of this Codex, labor relations are established once the notification of the labor contract is registered in the electron information system by means of an electron signature and this

information is sent to the employer in an electronic way”

In the 2-1 part of the above – mentioned article it is stated that “The labor relations with the employed workers adopted to relevant positions (professions) of the state organs the list of which is confirmed by an appropriate executive government are established once the labor contract between them is concluded on the paper.” As it seems, the labor contract acts as a legal fact creating a right. Conclusion of the labor contract conditions establishment of labor legal relations. Besides it, it should be noted that labor legal relations can exist in different forms.

In the Decree (6) of the President of Azerbaijan Republic dated on July, 08, 2014, “The List of the positions (professions) created when labor relations in the state organs are concluded in a written form on the paper” is confirmed. According to this Decree, that list includes the positions election or appointment of which is carried out by MilliMajlis of Azerbaijan Republic; the positions appointment of which is carried out by the President of Azerbaijan Republic or Cabinet of Ministers of Azerbaijan Republic with the instruction of the President of Azerbaijan Republic; the positions election or appointment of which are carried out by the Nakhchivan Autonomous Republic or the chairman of the Supreme Assembly of Nakhchivan Autonomous Republic; special ranks inprosecution, justice, emergency situations, migration service, internal affairs, customs, tax, foreign affairs and special service bodies; positions held by the civilian employees engaged in intelligence and counter-intelligence activity.

To our opinion, the provisions stated in the legislation once again confirm that labor relations of civil servants refer to administrative-legal and individual-legal relations system. Legal relations are not mandatorily bear administrative-legal and individual-legal character. Legislative system about civil service includes the norms about different legal fields making a single unity. Nature and diversity of legal relations of civil service are also confirmed by S.V.Dorokhov’s scientific assumptions about lack of an exact border between social and individual right. According to the author, it conditions possibility of transition of formal elements of social and individual right to different legal field [9, s.45].

As one of the part of the legal relations of civil service – employer is the state; another part is a civil servant. Consequently, as the subject of legal relations of civil service, the state, the heads of state government and state administrative bodies act as employers. Here bilateral legal subjectivity attracts attention: legal relations established between the civil servant and the state; legal relations established between the head of the state organ representing the state, and the civil servant. Civil servants are not ordinary workers adopted to the state service individually. As the subject of the constitutional and administrative right, the civil servants have special status and authorities. The civil servants act as the representatives of the administrative government. Therefore, they have a right to make decisions of state governmental and state administrative character. From the point of view of salary, it can be said that the civil servants are the category of workers with a special status.

One of the main characteristics of the legal relations object of civil service is that these relations are not for gaining personal aims, but for implementation of missions and functions of the state in accordance with the Constitution of Azerbaijan Republic and other legislative acts. The content of legal relations of the civil service consists of special rights, duties, terminations, prohibitions and provisions based on the principles of the civil service.

According to the legislation on the civil service, the civil servants undergo civil service depending on the legal status. Taking into consideration the state service being a complex legal institution and making a unity together with a legislation system, existence of service-labor concept in a scientific turnover, civil service being one of the types of professional activity, civil servants being the category of workers of a special rank and other aspects, it can be said that the norms of labor law influences on the activity of all civil servants caring out mission and functions of the state, state government and administrative bodies of all categories.

Labor legal norms hold a special place in legal regulation of administrative relations established in civil service field, as well as in legal regulation of labor relation of civil servants. From this point of view it can be said that separate norms of labor legislation are performed as the provisions of the normative legal act without undergoing serious changes, just being modified in a necessary level taking into consideration specific peculiarities of each civil service activity.

Result. As the conclusion of the conducted scientific analyzes the followings can

be stated. The main priority directions of modern state administration consist of improvement of existing legal basis, establishment of a new administration mechanism, systemization of a state government and state administration bodies, formation of a corps of professional civil servants, usage of potential of civil servants, increase of their service and professionalism level, provision of efficient usage of administration experience and labor.

Social relations established in the state administration field are regulated by the legal acts adopted by the state government and state administration bodies. The state administrative relations can be expressed in narrow and wide meanings as follows.

In the narrow meaning, the state administrative relations can be called the complex of administrative relations in which the interest of the state is expressed, in the wide meaning they can be called the set of administrative relations established in the field of implementation of the missions and functions of the state in accordance with the Constitution of Azerbaijan Republic and other legislative acts.

The state administrative relations are established, changed and terminated in relation with organization and activity of the state government and state administrative bodies in accordance with the current legislation, as well as implementation of missions and functions of the state in accordance with their status and authorities. Administrative relations making the subject of legal regulation of civil service relations are

legal model of the administrative relations identified in the legislation on civil service.

According to theoretical provisions and legislation on civil service, it can be said that the legal relations established upon activity of civil servants include both administrative relations based on mutual governmental relations, and the relations upon labor contract containing in it legal equality of the parties.

One of the typical characteristics of civil service legal relations is coincidence of the elements included in its structure with the labor legal relations. Labor relations of civil servants act as the integral part of the legal relations of the civil service. Here, legal relations attract attention mainly from two aspects. One of these relations is the legal relations established on civil administration based government – subordina-

tion principle. The other is legal relations established in accordance with the labor contract and implementation of constitutional labor relations in state organs based on freedom of labor principle. The main subject of both two legal relations is a civil servant. This aspect combines labor legal relations of civil servants in the system of relations of civil administration and labor contract character.

Labor relations of civil servants acts both as an integral part of the social-legal relations emerging in the process of organization of civil service, and also of individual-legal relations established during implementation of in-apparatus relations. Through mutual unity these administrative relations having social-legal and individual-legal character make a system of legal relations of a unified civil service.

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